Supreme Court, U.S.
FILED

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No.

In The

Supreme Court of the United States

CHRISTOPHER T. HARRIS,
Petitioner

v.

STATE OF GEORGIA

On Petition For Writ Of Certiorari
To The Georgia Court Of Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Does the State of Georgia have the legal authority under the U.S. Constitution to use a criminal procedural device equivalent to the former North Carolina procedural device of "nolle prosequi with leave" to deprive an accused citizen of his constitutional right to a speedy trial?

2. Does an accused citizen who has been arrested but never indicted have the right to a direct appeal under the Official Code of Georgia Annotated (O.C.G.A.) § 5-6-34(a) of the trial court's order denying a motion to dismiss that is based upon the deprivation of defendant's constitutional right to a speedy trial?

TABLE OF CONTENTS

Page

Questions Presented for Review i

Table of Contents ii

Table of Authorities v
Cases v
Statutes vi

Opinions Below 1

Statement of Jurisdiction 2

Constitutional Provisions and Federal and State Statutes 3

Statement of the Case 4
A. Statement of Facts 4
B. History of Proceedings Below 6

Reasons for Granting the Writ 8

Conclusion 9

Appendices

August 12, 1997 Letter from Defense Counsel Steve Sadow to Dekalb County District Attorney demanding speedy indictment and trial. ..... App. 1

January 9, 1998 letter from Dekalb Assistant District Attorney Jacqueline Hardy advising that the charges would not be presented to Grand Jury due to insufficient evidence .... App. 2

January 14, 1998 letter from District Attorney explaining that case was closed but charges against petitioner would be designated NPGJ, meaning they would remain pending indefinitely. ..... App. 4

March 13, 1998 Memorandum from Dekalb ADA Jacqueline

Hardy to Dekalb Superior Court Judge Edward D. Wheeler, in answer to petitioner's Motion to Dismiss Arrest Warrants .. App. 5

April 28, 1998 Order of the Dekalb County Superior Court denying Motion to Dismiss Arrest Warrants 96W01014 in *State v. Christopher Harris*, unindicted ..... App. 7

May 8, 1998 Order of the Dekalb County Superior denying Motion for Certificate of Review in *State v. Christopher Harris*, unindicted ..... App. 9

Application for Discretionary Appeal to Georgia Court of Appeals ..... App. 10

Notice to the Dekalb County Superior Court of defendant's Intent to Appeal Denial of Motion to Dismiss to the Georgia Court of Appeals ..... App. 12

June 9, 1998 Order of the Georgia Court of Appeals dismissing discretionary appeal A98D0351 in *State v. Christopher Harris* ..... App. 13

August 26, 1998 Order of the Georgia Court of Appeals dismissing direct appeal A98A2278 in *State v. Christopher Harris* ..... App. 14

September 24, 1998 Order of the Georgia Court of Appeals denying Motion for Reconsideration in *State v. Christopher Harris*, case no. A98A2278 ..... App. 16

February 5, 1999 Order of the Supreme Court of Georgia denying the Writ of Certiorari to the Supreme Court of Georgia in *State v. Christopher Harris*, case no. S99C0114 .. App. 17

Notice of Intent to Apply to the U.S. Supreme Court for the Writ of Certiorari ..... App. 18

Provisions of the Constitution of the United States ..... App. 20
Amendment IV - Security from Unwarrantable Search and Seizure ..... App. 20
Amendment V - Rights of Accused in Criminal Proceedings . App. 20

Amendment VI - Right to Speedy Trial, Witnesses, etc. .... App. 20
Amendment XIV Section 1 - Citizenship Rights Not to Be Abridged by States ..... App. 20

Provisions of the Bill of Rights of the Georgia Constitution of 1983 ..... App. 22
Paragraph I. Life, liberty, and property ..... App. 22
Paragraph II. Protection to person and property; equal protection ..... App. 22
Paragraph VII. Citizens, protection of. ..... App. 22
Paragraph XI. Right to trial by jury; number of jurors; selection and compensation of jurors. ..... App. 22
Paragraph XII. Right to the courts ..... App. 22
Paragraph XIII. Searches, seizures, and warrants ..... App. 22

Statutory Provisions from the U.S. Code ..... App. 24
Speedy Trial Act of 1974
Sec. 3161 Time Limits and Exclusions. ..... App. 24
Sec. 3162. Sanctions ..... App. 24

Statutory Provisions from Official Code of Georgia Annotated, (O.C.G.A.) ..... App. 26
O.C.G.A. § 5-6-34. Direct Appeal ..... App. 26
O.C.G.A. § 5-6-35. Discretionary Appeal ..... App. 28
O.C.G.A. §16-5-42. False imprisonment under color of legal process ..... App. 31
O.C.G.A. § 16-12-100. Sexual exploitation of children; reporting violation; forfeiture; penalties ..... App. 31
O.C.G.A. §17-7-170. Demand for trial; discharge and acquittal for lack of prosecution ..... App. 35
O.C.G.A. § 51-7-1. Right of action for false arrest. ..... App. 36

TABLE OF AUTHORITIES

CASES

Barker v. Wingo, 407 U.S. 514 (92 S. Ct. 2182, 33 L. Ed. 2d 101) 9

Department of Transportation V. Hardaway Company, 454 S.E.2d 167, 216 Ga. App. 262 12

Dickey v. Florida, 398 U.S. 30 (90 S. Ct. 1564, 26 L. Ed. 2d 26) (1970) 9

Dillingham v. United States, 423 U.S. 64 (1975) 10

Glidewell v. State, 169 Ga. App. 858, 314 S.E.2nd 924 (1984) 10

Haisman v. State, 242 Ga. 896, (252 S.E.2d 397) 11

Hubbard v. State, 254 Ga. 694, 333 S.E.2d 827 (1985) 10, 12, 13

Klopfer v. North Carolina, 386 U.S. 213 (1967) 5, 8, 10, 13

Moore v. Bank of Fitzgerald, 465 S.E.2d 445, 266 Ga. 190 (S. Ct. 1996) 12

Patterson v. State, 287 S.E.2d 7, 248 Ga. 875 (1982) 12, 13

Scroggins v. Edmondson, 250 Ga. 430, 431-432(1)(c) (297 S.E.2d 469) (1982) 12, 13

Smith v. State, 169 Ga. App. 251 (312 S.E.2d 375) (1983) 12

Strunk v. United States, 412 U.S. 434 (93 S. Ct. 2260, 37 L. Ed. 2d 56) (1973) 9

United States v. MacDonald, 435 U.S. 850 (1978) 11, 12

United States v. MacDonald, 456 U.S. 1 (1982) 5

United States v. Marion, 404 U.S. 307 (1971) 10

United States v. Palmer, 502 F.2d 1233 (1974) 11

Article III, § 2 of the U.S. Constitution 2

Georgia Constitution Bill of Rights ¶ II 3

Georgia Constitution Bill of Rights ¶ XI 3, 6, 13

Georgia Constitution Bill of Rights ¶ XII 3

Georgia Constitution Bill of Rights ¶ XIII 3, 9

United States Constitution Fourth Amendment 3

United States Constitution, Fifth Amendment 2, 3

United States Constitution, Sixth Amendment 2, 3, 6, 10, 13

United States Constitution, Fourteenth Amendment 2, 3

STATUTES

18 USC § 3161 ..... 3, 10, 11

18 USC § 3162. 3

28 U.S.C. §4257(a) 2

O.C.G.A. § 5-6-34 ..... i, 3, 7

O.C.G.A. § 5-6-35 ..... 2, 3

O.C.G.A. § 16-5-42 ..... 3, 10

O.C.G.A. § 16-12-100 ..... 3, 4

O.C.G.A. § 17-7-170 ..... 3, 10

O.C.G.A. § 51-7-1 ..... 3, 10, 11

RULES OF THE UNITED STATES SUPREME COURT

U.S. Supreme Court Rule 10(c) 2, 3

U.S. Supreme Court Rule 14.5 2

PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The opinions and Orders of the Superior Court of Dekalb County, Georgia (App. 7-9) are not published. The opinions and Orders of the Georgia Court of Appeals (App. 13-16) are not published. The Ruling of the Supreme Court of Georgia (App. 17) is not published.

STATEMENT OF JURISDICTION

1. The date of entry of the judgement sought to be reviewed is August 26, 1998. The Georgia Court of Appeals denied petitioner's motion for reconsideration of that judgement September 24, 1998.

2. This petition is for the writ of certiorari to the Georgia Court of Appeals for a case of which Petition for the Writ of Certiorari in the Supreme Court of Georgia, the state's highest court, was denied on February 5, 1999. Petitioner's filing May 6, 1999 of his Petition for the Writ of Certiorari to the Georgia Court of Appeals was returned by the Clerk of the Court for revision on May 14, 1999, with instructions that the revised copies would need to be received in the Office of the Clerk no later than July 13, 1999, sixty (60) days from the date of the Clerk's letter, in accordance with U.S. Supreme Court Rule 14.5.

3. 28 U.S.C. § 1257(a) gives the Supreme Court of the United States jurisdiction over review of final judgments or decrees rendered by the highest court of a State in which a decision could be had where any title, right, privilege, or immunity is claimed under the Constitution of the United States, a most important issue in the instant case.

4. Article III, § 2 of the U.S. Constitution gives to the Supreme Court of the United States jurisdiction over all Cases, in Law and Equity, arising under the U.S. Constitution. The instant case arises from the deprivation by the state of Georgia of petitioner's constitutional right to a speedy trial under the Sixth Amendment of the United States Constitution, as qualified by the Fifth and Fourteenth Amendments.

5. U.S. Supreme Court Rule 10(c) gives this Court jurisdiction when a state court of last resort has decided an important federal question in a way that conflicts with a relevant decision of this Court, as in the instant case.

CONSTITUTIONAL PROVISIONS AND FEDERAL AND STATE STATUTES

The appendix sets forth verbatim the following referenced constitutional provisions: Amendments of the U.S. Constitution: Fourth, Fifth, Sixth and Fourteenth; paragraphs from Georgia Constitution Bill of Rights: Article I, Section I, ¶¶ II, XI(a), XII and XIII. The appendix sets forth verbatim all or relevant parts of the following referenced statutory and regulatory provisions: 18 USC § 3161, 18 USC § 3162., O.C.G.A. § 5-6-34, O.C.G.A. § 5-6-35, O.C.G.A. § 16-5-42, O.C.G.A. § 16-12-100, O.C.G.A. § 17-7-170 and O.C.G.A. § 51-7-1.

STATEMENT OF THE CASE

A. Statement of facts

This case rests on the fundamental constitutional right of an accused citizen to a speedy trial. Petitioner was arrested over three years ago, never indicted or brought to trial, yet the State refuses to dismiss the arrest warrant.

Petitioner, a resident of DeKalb County, Georgia, was arrested by local municipal police in DeKalb County on May 9, 1996 and again on June 17, 1996 -- first for an alleged misdemeanor violation of O.C.G.A. §16-12-100(b)(8) (App. 31) Warrant Number 96W97454 and then for an alleged felony violation of O.C.G.A. § 16-12-100(b)(1)Warrant Number 96W01014, punishable by five (5) to twenty (20) years in prison and a fine of up to one hundred thousand dollars ($100,000.00).

Petitioner contends that both arrests were unfounded and were brought against him as retaliation by the local municipal police for petitioner's report of their tortious and criminal misconduct on the night of May 1, 1996.

That night, petitioner had called police for help with a deranged man with a gun. A municipal police officer was dispatched and was on the scene as petitioner was shot repeatedly. But the responding officer fled from the scene rather than to render any assistance. A short while later, the shooter was permitted to escape even though the responding officer had a good opportunity to apprehend him. Afterward, the responding officer filed a false report to try to cover up dereliction and breach of legal duty. Petitioner reported the derelict breach and the falsehoods to the officer's superiors at the municipal police department.

After petitioner reported the misconduct and false reporting to the superiors of the responding officer, the very officers who took those reports attacked petitioner under color of legal process, resulting in the two false and malicious arrests.

On July 15, 1996 a probable cause hearing was held in DeKalb County Magistrate Court against petitioner, and arrest warrant No. 96W01014, dated June 17, 1996 was bound over to the Superior Court of DeKalb County.

Petitioner contends that probable cause was found in error and that there was in fact a demonstrable want of probable cause as attested to by the

presiding magistrate's own words as recorded by a certified Court Reporter.

In spite of petitioner's persistent demands for a speedy trial (App. 1, letter from petitioner's counsel to Office of the DeKalb County District Attorney, August 12, 1997) there was no indictment, no formal accusation, no arraignment and no trial on either arrest warrant. Nor would the District Attorney formally dismiss the charges.

Petitioner contends that the DeKalb County District Attorney is unwilling to present the case to the Grand Jury because an acquittal at trial would give petitioner a cause of action and a very strong case to sue for false arrest and false imprisonment, as well as to bring a complaint of criminal false imprisonment under color of legal process against municipal police officers.

On January 8, 1998, the case related to the second arrest warrant was closed by the DeKalb County District Attorney for lack of evidence.

But even then, rather than dismissing the charge, the DeKalb County District Attorney left it in a pending status with a designation of NPGJ, an acronym for Georgia's technical prosecutorial disposition of "Not Presented to Grand Jury." NPGJ is a prosecutorial device equivalent to that once used by the state of North Carolina of "nolle prosequi with leave". This Court ruled that it was unconstitutional in *Klopfer v. North Carolina*, 386 U.S. 213 (1967) because it violated the defendant's constitutional right to a speedy trial.

> "The North Carolina Supreme Court's conclusion - that the right to a speedy trial does not afford affirmative protection against an unjustified postponement of trial for an accused discharged from custody - has been explicitly rejected by every other state court which has considered the question." *Ibid.* at 219.

This Court explained in *United States v. MacDonald*, 456 U.S. 1, 8-9 (1982) how the nolle prosequi with leave was used in North Carolina:

> "*Klopfer v. North Carolina*, 386 U.S. 213 (1967), is not to the contrary. There, under an unusual state procedure, a prosecutor was able to suspend proceedings on an indictment indefinitely. The prosecutor could activate the charges at any time and have the case restored for trial, 'without further

> order' of the court. *Id.*, at 214. The charges against the defendant were thus never dismissed or discharged in any real sense so the speedy trial guarantee continued to apply."

On January 9, 1998, the District Attorney of DeKalb County informed petitioner that the case involving both arrest warrants would not be presented to the Grand Jury due to "insufficient evidence to establish the elements of the above offense". (App. 2.) But on January 14, 1998, The District Attorney sent petitioner another letter which advised petitioner that:

> "...the case will remain closed unless other evidence is forthcoming or further evaluation of the charges becomes necessary. You will be notified if the case is reopened." (App. 3, Letter from DeKalb County Office of District Attorney 1/14/98,)

On February 5, 1998, petitioner filed through counsel a motion to dismiss the warrants in the Superior Court of DeKalb County, predicated upon a documented lack of evidence, a showing that the adverse finding of probable cause was in error, a showing of likelihood that petitioner was falsely and maliciously arrested and that petitioner had formally demanded his constitutional right to a speedy trial under the Sixth Amendment to the U.S. Constitution (App. 20) and Article I, Section I, Paragraph XI(a) of the Georgia Constitution (App. 22) but that he had been deprived of that right in order to protect the arresting officer from liability for malicious arrest.

On April 28, 1998 petitioner's motion to dismiss on the second arrest warrant was denied. (App. 7-8.) No cause or reason was given for denying petitioner's motion by the Court. No reference was made to petitioner's claim that he had been denied his right to a speedy trial. One could only presume that the Court was simply upholding the District Attorney's unfiled Memorandum of Objection (App. 5), which argued that:

1) an arrest warrant for which probable cause has been found need not be dismissed even when there is a finding of insufficient evidence by subsequent investigation and,
2) dismissing the warrant would subject officers to possible liability for malicious arrest, and
3) dismissing the warrant would create an undue hardship for the Office of the District Attorney.

B. History of Proceedings Below

Petitioner, a homeowner in Doraville, Georgia, which is a northern suburb of Atlanta in DeKalb County, first came into contact with the Doraville police department on May 1, 1996, when he called 911 asking for emergency assistance with a deranged man (petitioner's adult son) who had taken his guns. The ensuing incidents which resulted in the two (2) arrests of petitioner are set out above.

Petitioner's filed his Motion to Dismiss of both Arrest Warrants Numbers 96W97454 and 96W01014 in the Superior Court of DeKalb County on February 5, 1998. The Superior Court denied the dismissal of the felony Arrest Warrant 96W01014 on April 28, 1999 (App. 7-8.)

Within ten (10) days from the entry of the Order denying petitioner's Motion to Dismiss of Arrest Warrant No. 96W01014, petitioner, as defendant in that criminal case, motioned the trial court for a certificate of review for interlocutory review under O.C.G.A. § 5-6-34(b) (App. 26.) On May 8, 1998, the trial court denied petitioner's motion for interlocutory review. (App. 9.)

Petitioner applied to the Georgia Court of Appeals for a discretionary appeal under O.C.G.A. § 5-6-35(a), (App. 10). The application for discretionary appeal was assigned docket no. A98D0351. Petitioner filed simultaneously a direct appeal under O.C.G.A. § 5-6-34(a)(1), (App. 12.), Appeals Court docket no. A98A2278. The Georgia Court of Appeals dismissed petitioner's application for discretionary appeal on June 9, 1998, (App. 13) and dismissed petitioner's direct appeal on August 26, 1998 (App. 14-15). The Georgia Court of Appeals denied Petitioner's Motion for Reconsideration on September 24, 1998.

Petitioner then petitioned the Supreme Court of Georgia for the Writ of Certiorari and was assigned docket no. S99C0114. The Supreme Court of Georgia denied the petition for the Writ of Certiorari on February 5, 1999. (App. 17.)

Petitioner timely filed in the Georgia Court of Appeals his Notice of Intent to Apply to the U.S. Supreme Court for the Writ of Certiorari (App. 18) on February 22, 1999 as required by Georgia Court of Appeals Rule 38(b).

Petitioner applies to the Supreme Court of the United States for the Writ of Certiorari to review the decision of the Georgia Court of Appeals which denied petitioner's motion for reconsideration after dismissing petitioner's

direct appeal of the DeKalb County Superior Court's April 29, 1998 Order denying his motion to dismiss Arrest Warrant No. 96W01014 on speedy trial grounds. The Georgia Court of Appeals decided that it lacked jurisdiction to consider the appeal because "the order appealed from is not one that is directly appealable under O.C.G.A. § 5-6-34(a)." (App. 14 ¶ 2.) The Court of Appeals held that, "the denial of a motion to dismiss a warrant does not constitute a final adjudication of the case" and thus petitioner was "instead required to seek an interlocutory appeal."

It is from those decisions that this Petition to the Supreme Court of the United States for the Writ of Certiorari arises.

Petitioner filed his Petition for the Writ of Certiorari to the United States Supreme Court within ninety (90) days of the entry of the order denying petitioner's Petition for the Writ of Certiorari in the Supreme Court of Georgia.

The Clerk of the Court sent the Petition back to petitioner on May 14, 1999 with instructions to make corrections and resubmit within sixty (60) days.

This revised petition is submitted within the requisite sixty (60) days.

REASONS FOR GRANTING THE WRIT

This is acase of great public importance because it involves the deprivation by the state of Georgia of the constitutional rights of citizens to a speedy trial when they may have been arbitrarily and capriciously arrested and therefore never indicted.

There is compelling reason for the United States Supreme Court to grant the Writ because Georgia and other states routinely deny to accused citizens their constitutional rights to a speedy trial, in defiance of this Court's ruling in *Klopfer v. North Carolina, supra.* This Court should use this case to set a precedent for any and all uses by state prosecutors of the procedural device of "nolle prosequi with leave" even when it is operated under the guise of differing names such as "Not Presented to Grand Jury", as in the instant case.

By reference to *Klopfer, supra,* petitioner has shown that this Court has already ruled that a device similar to the NPGJ device of Georgia prosecutors is unconstitutional. The decisions of the state courts in the instant case are

clearly antithetical to the principles of the United States Constitution and the prior rulings of the highest court in the land.

The deprivation of the constitutional rights of citizens to a speedy trial is an issue of great concern, gravity and importance to the public. Without the guarantee of a speedy trial or dismissal of false charges, the citizen's only security from false arrest is the anonymity of the herd. Most predators only eat until they're full. And some police are more like predators that they are the protectors and servants of the people.

The state of Georgia, as respondent in the instant case, maintains that "once a probable cause determination is made, there should be no need to dismiss a warrant if the State decides not to pursue the case." (*See* Memorandum Jacqueline Hardy, App. 6 ¶ 2.) That argument may be valid as long as it does not conflict with a defendant's right to a speedy trial. The rule of *stare decisis* has always held that in order for a defendant to claim the right to a speedy trial, he or she must first assert that right and then give the State a reasonable amount of time to act upon that assertion. *See e.g. Barker v. Wingo*, 407 U.S. 514, 515 (92 S. Ct. 2182, 33 L. Ed. 2d 101) (1972).

If the unindicted defendant never asserts his right to a speedy trial, then the State's contention that there should be no need to dismiss the charge(s) would hold true. But petitioner *did* assert his constitutional right to a speedy trial, verbally, by registered letter (App. 1) and by a Motion to Dismiss of the arrest warrants. Once a demand for speedy trial is asserted, then the State must either prosecute, as held by this Court in *Dickey v. Florida*, 398 U.S. 30, 37-38, (90 S. Ct. 1564, 26 L. Ed. 2d 26) (1970):

> "Although a great many accused persons seek to put off the confrontation as long as possible, the right to a prompt inquiry into criminal charges is fundamental and the duty of the charging authority is to provide a prompt trial..."

or dismiss,

> "In light of the policies which underlie the right to a speedy trial, dismissal must remain, as *Barker* noted, 'the only possible remedy'." *Strunk v. United States*, 412 U.S. 434, 440, (93 S. Ct. 2260, 37 L. Ed. 2d 56) (1973), *Barker v. Wingo*, *supra* at 522.

The denial of petitioner's petition for the writ of Certiorari by the

Supreme Court of Georgia leaves a legal inadequacy or 'loophole' in the justice system of the state of Georgia which renders virtually impotent:

(a) constitutional protections of the right of an accused citizen who has not been indicted to a speedy trial, and

(b) constitutional protections against false arrest (U.S.Const. amend. IV and Ga. Const. of 1983, art. I, § I, ¶ XIII), and

(c) the state criminal law which makes it a felony to falsely imprison a citizen under color of legal process (O.C.G.A. § 16-5-42) (App. 31), and

(d) the state tort law against false arrest. (O.C.G.A. § 51-7-1) (App. 31.)

The highest court of the State of Georgia has chosen not to accept responsibility in this matter. This Court, as the court of last resort in this nation, has a duty to protect the rights not only of petitioner but of all U.S. citizens to be free from the tyranny of false arrest and imprisonment and the uncertainty, emotional stress, and the economic strain of an indefinitely pending prosecution.

This Court ruled in *Klopfer, supra* that a device equivalent to the Georgia designation NPGJ for untried criminal cases is unconstitutional. Petitioner asks this Court to apply the same reasoning in the instant case.

The federal government enacted the *Federal Speedy Trial Act of 1974*, 18 USC §§ 3161-3174, to protect citizens who are subject to federal prosecution from the inherent despotic tendencies of police that might otherwise result in extensive abuses of the power of arrest. The Speedy Trial Act of 1974 mandates automatic dismissal by operation of law if there is no indictment within sixty days of arrest, subject only to certain conditions of delay. Most states have similar statutes for protecting the right to a speedy trial for any citizen who is arrested, but Georgia has no statute to protect the rights of a person who is arrested but never indicted. (*See* O.C.G.A. § 17-7-170, Georgia's Speedy Trial Statute. *See also Glidewell v. State*, 169 Ga. App. 858, 859, 314 S.E.2nd 924 (1984) and *Hubbard v. State*, 254 Ga. 694, 695, 333 S.E.2d 827 (S.Ct. 1985).)

Even though the Georgia State Legislature has not passed legislation to protect the constitutional rights to a speedy trial of a defendant who has been arrested but never indicted nor formally accused, the fact remains that the right to a speedy trial is a right accorded to every accused citizen under the state and federal constitutions. An arrested person who is not indicted has as much right to a speedy trial as anyone:

> "*United States v. Marion*, 404 U.S. 307 (1971), held that one's right to a speedy trial attaches when one becomes an accused and identified that point as arrest or when formal charges (indictment or information) are brought, whichever is earlier. This view was recently reaffirmed in *Dillingham v. United States*, 423 U.S. 64 (1975), which reversed the Fifth Circuit Court of Appeals for failure to apply sixth amendment standards to post-arrest, pre-indictment delay in *United States v. Palmer*, 502 F.2d 1233 (1974)." *Haisman v. State*, 242 Ga. 896, 897 (2) (252 S.E.2d 397)

Georgia prosecutors use the NPGJ disposition of criminal cases that cannot be prosecuted to postpone prosecution indefinitely. The purpose is to circumvent constitutional and statutory protections against false arrest in order to protect the police officers with whom they work from being prosecuted or sued for misconduct and abuse of their police powers. False arrest is a tort under Georgia Statutes (O.C.G.A. § 51-7-1) but the false imprisonment that typically accompanies false arrest is a felony (O.C.G.A. §16-5-42). (App. 32.)

This fact that Georgia prosecutors are using a prosecutorial device that was ruled unconstitutional in 1967 is demonstrated clearly by the facts of the instant case. As this case will prove, the Denial of Motion to Dismiss which is based upon speedy trial grounds *must* be handled as a collateral order that is directly appealable.

This Court has previously addressed the issue of whether the denial of a motion to dismiss is directly appealable as a *collateral order*. In *United States v. MacDonald*, 435 U.S. 850 (1978), (one (1) of two (2) Supreme Court cases involving, MacDonald, who, like petitioner, ended up being further victimized by police after he called them for emergency aid) this Court ruled that,

> "...if such an order may be appealed before trial, it is because it satisfies the criteria identified in *Cohen* and *Abney* as sufficient to warrant suspension of the established rules against piecemeal review before final judgment....We believe it clear that an order denying a motion to dismiss an indictment on speedy trial grounds does not satisfy those criteria....The resolution of a speedy trial claim necessitates a careful assessment of the particular facts of the case. As is reflected in the decisions of this Court, most speedy trial claims, therefore, are best considered only after the relevant facts

have been developed at trial." *Ibid.* at 857-858.

But if there is no trial, how can such facts ever be developed? There is no statutory protection of the right to a speedy trial in Georgia until AFTER indictment. If the state never indicts, then the charges are left pending forever. Yet, it is the citizen who has been arrested but never indicted nor formally accused who is most likely to have been *falsely* arrested. The failure of the Georgia state legislature to enact legislation to protect the rights of the presumably innocent person who is thus tyrannized by the state should invoke this Court's duty to do whatever it can to empower the rule of constitutional law and protect the civil rights of citizens.

The decision of this Court in *Macdonald (1 of 2), supra* leaves states free to utterly deny citizens the right to any trial at all, much less a speedy trial. In Georgia, an arrested citizen who is never indicted and whose case is relegated to the NPJG file has been sentenced to a life of uncertainty, emotional stress, public humiliation and the economic strain of an indefinitely pending prosecution hanging over him or her at the whim of the prosecutor. When that citizen has been falsely arrested, the injustice is compounded exponentially.

Ironically, the Supreme Court of Georgia has disregarded *MacDonald, id.* entirely. In a certified question from the Court of Appeals in 1985 in the Georgia case, *Hubbard v. State, supra*, at 695, the Supreme Court of Georgia ruled that the denial of a motion to dismiss on speedy trial grounds *is* directly appealable to the Georgia Court of Appeals. Yet the Court of Appeals refused to take petitioner's appeal "because the denial of a motion to dismiss a warrant does not constitute a final adjudication of the case." (App. 14, Order of Georgia Court of Appeals August 26, 1998 at 1 ¶ 2.)

Petitioner submits that this petition for the writ of certiorari should be granted because an order of the trial court that denies a motion to dismiss which is predicated upon a claim that the State has deprived the accused of his state and federal constitutional rights to a speedy trial constitutes a "collateral order" that is directly appealable despite the absence of traditional finality. *See generally, Moore v. Bank of Fitzgerald*, 465 S.E.2d 445, 266 Ga. 190 (S. Ct. 1996), *Hubbard v. State, supra, Smith v. State*, 169 Ga. App. 251 (312 S.E.2d 375) (1983), and *Patterson v. State*, 287 S.E.2d 7, 248 Ga. 875 (S. Ct. 1982).

In *Department of Transportation V. Hardaway Company*, 454 S.E.2d

167, 216 Ga. App. 262 at 263, the Supreme Court of Georgia set forth these grounds for determining whether an order of the trial court constitutes a "collateral order"

> "...the 'collateral order' exception to the final judgment rule established in *Scroggins v. Edmondson*, 250 Ga. 430, 431-432(1)(c) (297 S.E.2d 469) (1982). Under this three-part test, a collateral order is directly appealable if it (1) completely and conclusively resolves the issue appealed; (2) concerns an issue which is 'substantially separate' from the basic issues presented in the complaint; and (3) would result in the loss of an important right and is 'effectively unreviewable on appeal.'"

Note that the *Scroggins* test was set out in a civil case, but that the premise upon which it is based, that a collateral order is directly appealable, comes from its reliance on *Patterson v. State*, supra, a criminal case involving the denial of a motion to dismiss on grounds of double jeopardy. *Patterson* was in turn used by the Supreme Court of Georgia for its decision in *Hubbard v. State*, *supra*, which set the precedent for the right to a direct appeal for the indicted criminal defendant of an order denying a motion to dismiss which is predicated on grounds that the right to a speedy trial has been denied.

With the *Scroggins* test, and the Georgia case precedent set in *Hubbard*, *supra*, it is inequitable for the Court of Appeals or the Supreme Court to refuse the direct appeal of the denial of a motion to dismiss of a citizen who has been arrested just because he has not been indicted. The Georgia Court of Appeals and the Supreme Court of Georgia should have used the three-part *Scroggins* test to determine that petitioner had a direct right to appeal by the rule of *stare decisis*.

CONCLUSION

The case at bar presents questions of exceptional importance affecting one of the most fundamental rights of citizens in any civilized nation of justice. It is a right that is so important that it was embodied in the Bill of Rights of the U.S. Constitution. Every accused citizen has a right to a speedy trial by a jury of his peers. This Court ruled in *Klopfer*, *supra*, a landmark decision, that the speedy trial provisions of the Sixth Amendment apply to every citizen in every prosecution brought under state or federal law.

The right to a speedy trial is a right that is also embodied in the Bill of

Rights of the Georgia Constitution, at Article 1, Section 1, paragraph XI. (App. 22.)

Petitioner prays that the Court will use the instant case as an opportunity to review the prosecutorial device of NPGJ in Georgia and other states where it may go by other names. Regardless of the name that is used for it, the effect is the same, to deny justice and promote the tyranny of the state.

Petitioner prays that the Court will also revisit the issue of the right of the accused citizen to a direct appeal of the denial of a motion to dismiss on speedy trial grounds especially as it would affect someone who may have been arbitrarily and capriciously or maliciously arrested and who is then denied any trial at all in order to forestall any civil or criminal litigation against arresting officers. The denial of a motion to dismiss a criminal case on speedy trial grounds when the state refuses to try the case is an intolerable injustice that no conscientious jurist would allow.

In the instant case, the state writes that it will not dismiss because it wants to protect the arresting officers "from possible liability for malicious arrest". (App. 6 ¶ 2.) A responsible, strong and conscientious judiciary must remedy such blatant wrong, so that this nation under God will continue to thrive in freedom and government of the people, by the people and for the people shall not perish from the earth.

This the 13th day of July, 1999.

Respectfully submitted,

Christopher T. Harris
Pro se
2358 Terrell Drive
Chamblee, Georgia 30341-2328
(404) 458-2574

LAW OFFICE
STEVEN H. SADOW, P.C.
800 GRANT BUILDING
44 BROAD STREET, N.W.
ATLANTA, GEORGIA 30303

(404) 577-1400
FAX (404) 577-3600

August 12, 1997

Michelle McBrayer, Investigator
DeKalb County District Attorney's Office
700 N. McDonough Street
Decatur, Georgia 30030

RE: *State v. Christopher T. Harris,*
Warrant Nos. 96W-01014 and 96W-97454

Dear Michelle:

This is to confirm our telephone conversation of several days ago in which you indicated that your investigation of Mr. Harris was still continuing. As you are well aware, Mr. Harris was arrested on 5/9/96 and 6/17/96 on the charges of sexual exploitation of children. Over 14 months has passed since then. I have contacted you on repeated occasions during this time period to check on the progress of the investigation as well as to assert that Mr. Harris wants this matter resolved.

It is our belief that your office has had sufficient time to fully investigate this matter and the defendant's state and federal constitutional rights to a speedy trial have been violated. Accordingly, Mr. Harris hereby asserts in writing his demand for a speedy indictment and trial.

Sincerely,

/s/ Steve Sadow
Steven H. Sadow
Attorney for Defendant

SHS:cmp
cc: J. Tom Morgan, District Attorney

OFFICE OF THE DISTRICT ATTORNEY
STONE MOUNTAIN JUDICIAL CIRCUIT
DEKALB COUNTY COURTHOUSE
DECATUR, GEORGIA 30030

J. TOM MORGAN
DISTRICT ATTORNEY

404/371-2561
FAX 404/371-2981

January 9, 1998

Writer's Direct 371-2398

RE: CHRISTOPHER HARRIS
CHARGE: SEXUAL EXPLOITATION OF CHILDREN

TO WHOM IT MAY CONCERN:

CHARGES IN THE ABOVE-REFERENCED CASE WILL NOT BE PRESENTED TO THE GRAND JURY DUE TO INSUFFICIENT EVIDENCE TO ESTABLISH THE ELEMENTS OF THE ABOVE OFFENSE. PROPERTY WHICH WOULD NOT HAVE BEEN USED IN A TRIAL OF THE ABOVE CASE WHICH IS RETAINED BY THE DEKALB DISTRICT ATTORNEY'S OFFICE OR DORAVILLE POLICE DEPARTMENT MAY BE RELEASED TO CHRISTOPHER HARRIS

SINCERELY,

/s/ Jacqueline S. Hardy
JACQUELINE S. HARDY
ASSISTANT DISTRICT ATTORNEY

App. 3

OFFICE OF THE DISTRICT ATTORNEY
STONE MOUNTAIN JUDICIAL CIRCUIT
DeKalb County Courthouse
556 North McDonough Street
Decatur, Georgia 30030
Telephone (404) 371-2561 Facsimile (404) 371-2981

J. TOM MORGAN
District Attorney

RECORDS DIVISION
(404) 371-2575

1-14-98

Christopher T. Harris
3321 Wheeler Dr
Doraville GA 30340

STATE OF GEORGIA vs.: Christopher Thad Harris
CHARGE(S): Sexual Exploit of children
DATE OF ARREST: 06-20-96
DATE CLOSED: 01-08-98

You are advised that the above-styled felony criminal matter will not be presented to the DeKalb County Grand Jury at this time. The case will remain closed unless other evidence is forthcoming or further evaluation of the charges becomes necessary. You will be notified if the case is re-opened. The official disposition of these charges at this time is "Not Presented to Grand Jury", also referred to in criminal history as "NPGJ". If you were fingerprinted at the time you were booked into the DeKalb County Jail, this disposition will be sent to the Georgia Crime Information Center for entry on your criminal history record as required by Georgia law. The arrest for these charges will remain a permanent part of your criminal history. It is important to recognize that an arrest is not the same thing as a conviction.

If you were booked at the DeKalb County Jail and bonded out without using the services of a bonding company, the person who posted your bond may be entitled to a Release of the bond lien or property or refund of the cash. The person whose name is on the cash or property bond receipt issued at the Jail must personally bring the receipt and photo identification to the District Attorney's Records Division, Seventh Floor, DeKalb County Courthouse, between the hours of 9:00 A.M. and 4:30 P.M. to obtain a written Release.

RECORDS

DIVISION
/s/ Carole R. Louviere
Supervisor

Technicians initials: /s/ CMScott
Date Mailed: 01-14-98

MEMORANDUM

TO: JUDGE WHEELER, SENIOR JUDGE

FROM: JACQUELINE HARDY, ADA /s/ jsh

DATE: MARCH 13, 1998

RE: RESPONSE TO DEFENDANT'S BRIEF
STATE OF GEORGIA VS. CHRISTOPHER HARRIS

CC: MIKE KATZ, ATTORNEY FOR DEFENDANT

Two warrants are at issue in the above-referenced case. Warrant No. 96W97454 was issued on May 9, 1996 for the misdemeanor offense of Sexually Explicit Conduct by a Minor for Use in a Visual Medium involving a number of photographs of a female child posing in a sexually arousing manner. For whatever reason, this warrant was not subjected to a probable cause determination. Warrant No. 96W01014 was issued on June 17, 1996 for the felony offense of Sexual Exploitation of Children involving a videotape of a female child dancing and exposing her breasts. This warrant was bound over to DeKalb Superior Court after a determination of probable cause was made by Judge Elliott Shoenthal, Magistrate, on July 15, 1996. Defendant is requesting that both of these warrants be dismissed.

While the State concedes that Warrant No, 96W97454 should be dismissed since there was no probable cause determination and the State is not proceeding with indictment on that charge, we disagree that the second warrant, Warrant No. 96W01014, should be dismissed. Once a probable cause determination is made, there should be no need to dismiss a warrant if the State decides not to pursue the case. In the cases cited by Defendant, there is no indication that a probable cause determination had ever been made and therefore a dismissal of those warrants was appropriate.

In order to determine probable cause, a judge must find whether it is more probable than not that the defendant committed the acts charged. In this case, on July 15, 1996, when Judge Shoenthal heard the facts of the case, he

made that determination based on the facts before him at the time of the hearing and he bound the case over to Superior Court. A probable cause standard is not the applicable standard used by the District Attorney's Office in deciding whether or not to prosecute. Prior to such a decision being made in the District Attorney's Office, a lengthy investigation is conducted which often reveals facts which were not known to the Magistrate or the investigating officer. The fact that the District Attorney's Office decides not to prosecute based on information gained through an investigation should not negate the prior determination of probable cause.

Dismissing the warrant would not only negate Judge Shoenthal's previous order, which was valid at the time made, but it would subject officers to possible liability for malicious arrest and would create an undue hardship on the District Attorney's Office. If a Defendant is entitled to have a warrant dismissed any time the prosecuting authority decides not to prosecute, courts would be flooded with such requests. Any time a case is dismissed by way of not presenting the case to the grand jury or a nolle prosequi, a defendant would then be entitled to have such warrants be dismissed. Clearly that is not the intention of the appellate courts in affirming the dismissal of the warrants in the cases cited by Defendant.

Defendant claims he suffers restraints on his liberty. However, all conditions of bond are removed any time the prosecuting authority declines to prosecute, Any stigma he suffers from the arrest cannot be removed by the dismissal of these warrants because the arrest will always appear on Defendant's record.

Based on the foregoing reasons, the State respectfully requests the Court deny Defendant's request to dismiss Warrant No.96W01014.

IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

STATE OF GEORGIA	)	
Plaintiff	)	
vs.	)	WARRANT NOS. 96W97454 96W01014
CHRISTOPHER HARRIS,	)	
Defendant	)	

ORDER ON MOTION TO DISMISS WARRANTS
(Filed April 29, 1998)

The Defendant, through an attorney at law, filed a motion to dismiss these warrants. The Court held a hearing in which arguments were made. Subsequent thereto, additional briefs have been filed. The defendant is now Pro Se.

The State concedes that warrant number 96W97454 should be dismissed because there was never a judicial determination of probable cause. Therefore, warrant number 96W97454 is hereby DISMISSED.

The State objects to the dismissal of warrant number 96W01014. At a magistrate court hearing on July 1 5, 1 996, the charge set forth in this warrant was bound over to DeKalb Superior Court, and the defendant posted bond. The District Attorney decided on January 8, 1998 that the charge in this warrant would not be presented to the Grand Jury. On the same date the defendant was notified that the case was closed and would "remain closed unless other evidence is forthcoming or further evaluation of the charges becomes necessary."

In the case of McCord v. Jones, 168 Ga. App. 891 (1983), a warrant was issued and "the district attorney decided not to seek an indictment and requested that the Clerk of the Superior Court place the warrant on the 'dead docket' on the basis that there was insufficient evidence on which to

prosecute the motion." The case does not state if a probable cause hearing had been held. In the case before the Court, the district attorney "closed" the case, instead of asking the clerk to place the case on the dead docket.

After discussing the effect of placing an indicted case on the dead docket the court in McCord v. Jones states: "In this case, notwithstanding the possible inappropriateness of placing a warrant (rather than an actual indictment) on the dead docket, we find a similar case [sic] of finality on termination of the prior criminal proceeding. Certainly, nothing prevents the district attorney from subsequently seeking an indictment and proceeding with a prosecution; likewise, nothing prevents the appellant from formally moving for dismissal of the charges. The present disposition simply does not constitute an abandonment and/or termination of the proceeding, absent a subsequent formal entry of dismissal of the criminal charges."

The district attorney still has the right to present the charge to the Grand Jury if additional evidence is uncovered or further evaluation warrants.

The motion to dismiss warrant number 96W01014 is hereby DENIED.

This the 28th day of April, 1998

/s/ Edward D. Wheeler
EDWARD D. WHEELER
Senior Judge

Copies to:

Jacqueline Hardy
Assistant District Attorney

Christopher T. Harris

IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

STATE OF GEORGIA	)	
Plaintiff	)	
vs.	)	WARRANT NO. 96W01014
CHRISTOPHER HARRIS,	)	
Defendant	)	

ORDER
(Filed May 18, 1998)

The defendant's Motion for Certification of Ruling under O.C.G.A. § 5-6-34(e) [sic] is hereby DENIED.

This 8th day of May, 1998.

/s/ Edward D. Wheeler
EDWARD D. WHEELER
Senior Judge

Copies to:

Christopher T. Harris, pro se
Jacqueline S. Hardy
Assistant District Attorney

IN THE COURT OF APPEALS
STATE OF GEORGIA

CHRISTOPHER T. HARRIS,
Appellant

vs NO.: _____

STATE OF GEORGIA,
Appellee.

APPLICATION FOR APPELLATE REVIEW
(Filed May 29, 1998)

CHRISTOPHER T. HARRIS, applicant, applies to this Court as follows:

(1) To issue an order granting the applicant an appeal from the order of the Superior Court of DeKalb County, Honorable Edward D. Wheeler, presiding, in the case styled *State of Georgia v. Christopher T. Harris,* Warrant Nos. 96W97454, 96W01014, this order having held that the motion to dismiss warrant number 96W01014 is denied.

(2) Applicant shows that the jurisdiction is properly in this Court because O.C.G.A § 5-6-35(a)(11) applies.

(3) This application of appeal is filed within 30 days of the entry of the order complained of.

(4) Copies of all pertinent documents have been attached to this application as exhibits including a copy of the order being appealed, as well as a copy of any petition or motion which led directly to the order being appealed, and a copy of any responses to such petition or motion.

(5) Applicant submits that an appeal should be granted because the trial judge failed to address the issue of applicant's right to a speedy trial and the lack of probable cause in issuing warrant number 9601014.

Applicant respectfully shows that if this Honorable Court declines the appeal of this matter and the trial court's ruling will be permitted to stand, such would be a miscarriage of justice because applicant's Sixth Amendment rights were violated and because the failure to dismiss Warrant No.9601014

places applicant's liberty in perpetual jeopardy.

/s/ Christopher T. Harris
CHRISTOPHER T. HARRIS
Defendant, *pro se*

2358 Terrell Drive
Chamblee, Georgia 30341
(770)458-2754

IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

STATE OF GEORGIA

vs. WARRANT NOS.: 96W97454
96W01014

CHRISTOPHER T. HARRIS,
Defendant.

NOTICE OF APPEAL
(Filed May 29, 1998)

Notice is hereby given that CHRISTOPHER T. HARRIS, defendant in the above-styled case, hereby appeals to the Court of Appeals from the order entered herein on April 29, 1998.

The offenses for which the defendant was arrested are alleged violations of O.C.G.A. §16-12-100, sexual exploitation of children and sexually explicit conduct of a minor for use in visual medium.

Defendant's Motion to Dismiss Warrants was filed on February 6, 1998. Defendant's Certificate for Immediate Review was filed May 7,1998 and denied on May 8, 1998.

The Clerk will please omit nothing from the record, including all motions, orders, warrants and transcripts of proceedings related to Defendant's Motion to Dismiss Warrants.

The Court of Appeals, rather than the Supreme Court has jurisdiction of this case on appeal for the reason that O.C.G.A. § 5-34(a)(l) applies and because Defendant asserted his right to a speedy trial under O.C.G.A. § 17-7-170.

Dated: May 29, 1998.

/s/ Christopher T. Harris
CHRISTOPHER T. HARRIS
Defendant, *pro se*
2358 Terrell Drive
Chamblee. Georgia 30341
(770)458-2754

Court of Appeals of the State of Georgia

ATLANTA, JUN -9 1998

The Court of Appeals hereby passes the following order:

A98D0351. CHRISTOPHER T. HARRIS V. STATE

Christopher T. Harris filed this pro se application for discretionary review of the trial court's April 29, 1998 order denying his motion to dismiss a warrant against him. However, the interlocutory appeal procedures are required to appeal the denial of a motion to dismiss a warrant or accusation as the case remains pending for trial. Boyd v. State, 191 Ga. App. 435 (383 SE2d 906) (1989). The application shows that Harris sought and was denied a certificate of immediate review which is required to request an appeal of an interlocutory order under OCGA § 5-6-34 (b). Because of Harris' failure to satisfy the interlocutory appeal procedures, this court lacks jurisdiction to consider this appeal, and the application is hereby DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta June -9 1998

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia

Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/ William L. Martin III

Clerk.

Court of Appeals of the State of Georgia

ATLANTA, AUGUST 26, 1998

The Court of Appeals hereby passes the following order:

A98A2278. CHRISTOPHER T. HARRIS V. THE STATE

Christopher T. Harris, pro se, filed a notice of direct appeal from the trial court's April 29, 1998 order denying his motion to dismiss an arrest warrant against him. The warrant was issued on June 17, 1996 for the arrest of Harris for the offense of sexual exploitation of children. The district attorney, however, decided not to present the case to the grand jury. Harris then filed a motion to dismiss the warrant, which the trial court denied. Harris appeals from this order.

An order denying a motion to dismiss a warrant does not constitute a final adjudication of the case. "Since four years have not elapsed since the warrants were issued, nothing prevents the district attorney from proceeding with a prosecution. See OCGA § 17-3-1(c). 'The present disposition simply does not constitute an abandonment and/or termination of the proceeding, absent a subsequent formal entry of dismissal of the criminal charges. [Cits.]' McCord v. Jones, 168 Ga. App. 891, 893 (311 SE2d 209) (1983)." Watkins V. Laser/Print-Atlanta. Inc., 183 Ga. App. 172 (358 SE2d 477) (1987). Because the denial of a motion to dismiss a warrant does not constitute a final adjudication of the case, Harris was not entitled to a direct appeal, but was instead required to seek an interlocutory appeal. OCGA § 5-6-34(b). The record shows that Harris sought and was denied a certificate of immediate review, which is required to request an appeal of an interlocutory order. Because the order appealed from is not one that is directly appealable under OCGA § 5-6-34(a), this Court does not have jurisdiction to consider the appeal. Accordingly, this appeal is hereby DISMISSED.
96W97454

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta AUG 26 1998

I certify that the above is a true extract from

the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/ William L. Martin, III
Clerk.

Court of Appeals of the State of Georgia

ATLANTA, SEPTEMBER 24, 1998

The Court of Appeals hereby passes the following order:

Case No. A98A2278

CHRISTOPHER T. HARRIS V. THE STATE

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta SEP 24 1998

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/ William L. Martin, III
Clerk.

SUPREME COURT OF THE STATE OF GEORGIA

CLERK'S OFFICE

ATLANTA

DATE: February 05, 1999

Christopher T. Harris
2358 Terrell Drive
Chamblee GA 30341

Case No. S99C0114

CHRISTOPHER T. HARRIS v. THE STATE

COURT OF APPEALS CASE NO. A98A2278

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur.

Sincerely,

_____ [sic]
Sherie M. Welch, Clerk

IN THE COURT OF APPEALS
STATE OF GEORGIA

CHRISTOPHER T. HARRIS Appellant, vs. STATE OF GEORGIA Appellee.	APPEAL CASE NUMBER A98A2278 Georgia Supreme Court Case No. S99C0114

NOTICE OF INTENT TO APPLY TO THE U.S. SUPREME COURT FOR THE WRIT OF CERTIORARI

(Filed February 22, 1999)

NOTICE is hereby given that CHRISTOPHER T. HARRIS, appellant and petitioner in the above-styled cases, will apply to the Supreme Court of the United States for the writ of certiorari to appeal the decisions of this Court and the Supreme Court of Georgia which denied to plaintiff his right to a direct appeal of the April 28, 1998 Order of the Dekalb County Superior Court denying appellant's motion to dismiss Arrest Warrant No. 96W01014, said motion to dismiss having been founded upon authority of the speedy trial provisions of the Sixth Amendment to the United States Constitution and Article I, Section I, Paragraph XI of the Georgia Constitution.

Appellant's direct appeal to this Court was rejected in an order dated August 26, 1998 which cited a lack of jurisdiction over this speedy trial action. Appellant's motion for reconsideration was rejected by this Court on September 24, 1998, without comment. Appellant's Petition for Certiorari to the Georgia Supreme Court was denied without comment February 5, 1999. This notice is made within twenty (20) days of the decision of the Georgia Supreme Court as required by Georgia Court of Appeals Rule 38(b).

Appellant requests that the Clerk will please stay the remittitur in this case and omit nothing from the record, including all petitions, motions, applications, orders, warrants and transcripts of proceedings related to appellant's appeal in this Court and his petition for certiorari to the Georgia

Supreme Court.

Respectfully submitted this 22nd day of February, 1999.

/s/ Christopher T. Harris
Christopher T. Harris, Pro Se
2358 Terrell Drive
Chamblee, Georgia 30341
(770) 458-2754

Provisions of the Constitution of the United States

[Amendment IV]
[Security from Unwarrantable Search and Seizure]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

[Amendment V]
[Rights of Accused in Criminal Proceedings]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall he be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken forpublic use, without just compensation.

[Amendment VI]
[Right to Speedy Trial, Witnesses, etc.]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

[Amendment XIV]

Section 1.

[Citizenship Rights Not to Be Abridged by States]

All persons born or naturalized in the United States and subject to the

jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

....

Section 5.

[Power to Enforce This Article]

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Provisions of the Bill of Rights of the Georgia Constitution of 1983

Paragraph I. Life, liberty, and property.

No person shall be deprived of life, liberty, or property except by due process of law.

Paragraph II. Protection to person and property; equal protection.

Protection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws.

Paragraph VII. Citizens, protection of.

All citizens of the United States, resident in this state, are hereby declared citizens of this state; and it shall be the duty of the General Assembly to enact such laws as will protect them in the full enjoyment of the rights, privileges, and immunities due to such citizenship.

Paragraph XI. Right to trial by jury; number of jurors; selection and compensation of jurors.

(a) The right to trial by jury shall remain inviolate, except that the court shall render judgment without the verdict of a jury in all civil cases where no issuable defense is filed and where a jury is not demanded in writing by either party. In criminal cases, the defendant shall have a public and speedy trial by an impartial jury; and the jury shall be the judges of the law and the facts.

(b) A trial jury shall consist of 12 persons; but the General Assembly may prescribe any number, not less than six, to constitute a trial jury in courts of limited jurisdiction and in superior courts in misdemeanor cases.

(c) The General Assembly shall provide by law for the selection and compensation of persons to serve as grand jurors and trial jurors.

Paragraph XII. Right to the courts.

No person shall be deprived of the right to prosecute or defend, either in person or by an attorney, that person's own cause in any of the courts of this state.

Paragraph XIII. Searches, seizures, and warrants.

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue except upon probable cause supported by oath or affirmation particularly describing the place or places to be searched an the persons or things to be seized.

Statutory Provisions from the U.S. Code
(relevant portions)

TITLE 18
PART II
CHAPTER 208
(Speedy Trial Act of 1974)

Sec. 3161. Time limits and exclusions

(a) In any case involving a defendant charged with an offense, the appropriate judicial officer, at the earliest practicable time, shall, after consultation with the counsel for the defendant and the attorney for the Government, set the case for TRIAL on a day certain, or list it for TRIAL on a weekly or other short-term TRIAL calendar at a place within the judicial district, so as to assure a SPEEDY TRIAL.

(b) Any information or indictment charging an individual with the commission of an offense shall be filed within thirty days from the date on which such individual was arrested or served with a summons in connection with such charges. If an individual has been charged with a felony in a district in which no grand jury has been in session during such thirty-day period, the period of time for filing of the indictment shall be extended an additional thirty days.

Sec. 3162. Sanctions

(a)(1) If, in the case of any individual against whom a complaint is filed charging such individual with an offense, no indictment or information is filed within the time limit required by section 3161(b) as extended by section 3161(h) of this chapter, such charge against that individual contained in such complaint shall be dismissed or otherwise dropped. In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of this chapter and on the administration of justice.

(2) If a defendant is not brought to trial within the time limit required by section 3161(c) as extended by section 3161(h), the information or indictment shall be dismissed on motion of the defendant. The defendant shall have the burden of proof of supporting such motion but the Government shall have the burden of going forward with the evidence in

connection with any exclusion of time under subparagraph 3161(h)(3). In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of this chapter and on the administration of justice. Failure of the defendant to move for dismissal prior to trial or entry of a plea of guilty or nolo contendere shall constitute a waiver of the right to dismissal under this section.

Statutory Provisions from Official Code of Georgia Anotated, (O.C.G.A.)

TITLE 5
APPEAL AND ERROR

CHAPTER 6
CERTIORARI AND APPEALS TO APPELLATE COURTS GENERALLY

O.C.G.A.§ 5-6-34

5-6-34. Judgments and rulings deemed directly appealable; procedure for review of judgments, orders, or decisions not subject to direct appeal; scope of review; hearings in criminal cases involving a capital offense for which death penalty is sought.

(a) Appeals may be taken to the Supreme Court and the Court of Appeals from the following judgments and rulings of the superior courts, the constitutional city courts, and such other courts or tribunals from which appeals are authorized by the Constitution and laws of this state:

(1) All final judgments, that is to say, where the case is no longer pending in the court below, except as provided in Code Section 5-6-35;

(2) All judgments involving applications for discharge in bail trover and contempt cases;

(3) All judgments or orders directing that an accounting be had;

(4) All judgments or orders granting or refusing applications for receivers or for interlocutory or final injunctions;

(5) All judgments or orders granting or refusing applications for attachment against fraudulent debtors;

(6) All judgments or orders granting or refusing to grant mandamus or any other extraordinary remedy, except with respect to temporary restraining orders;

(7) All judgments or orders refusing applications for dissolution of corporations created by the superior courts; and

(8) All judgments or orders sustaining motions to dismiss a caveat to the probate of a will.

(b) Where the trial judge in rendering an order, decision, or judgment, not otherwise subject to direct appeal, certifies within ten days of entry thereof that the order, decision, or judgment is of such importance to the case that immediate review should be had, the Supreme Court or the Court of Appeals may thereupon, in their respective discretions, permit an appeal

to be taken from the order, decision, or judgment if application is made thereto within ten days after such certificate is granted. The application shall be in the nature of a petition and shall set forth the need for such an appeal and the issue or issues involved therein. The applicant may, at his or her election, include copies of such parts of the record as he or she deems appropriate, but no certification of such copies by the clerk of the trial court shall be necessary. The application shall be filed with the clerk of the Supreme Court or the Court of Appeals and a copy of the application, together with a list of those parts of the record included with the application, shall be served upon the opposing party or parties in the case in the manner prescribed by Code Section 5-6-32, except that such service shall be perfected at or before the filing of the application. The opposing party or parties shall have ten days from the date on which the application is filed in which to file a response. The response may be accompanied by copies of the record in the same manner as is allowed with the application. The Supreme Court or the Court of Appeals shall issue an order granting or denying such an appeal within 30 days of the date on which the application was filed. Within ten days after an order is issued granting the appeal, the applicant, to secure a review of the issues, may file a notice of appeal as provided in Code Section 5-6-37. The notice of appeal shall act as a supersedeas as provided in Code Section 5-6-46 and the procedure thereafter shall be the same as in an appeal from a final judgment.

(c) In criminal cases involving a capital offense for which the death penalty is sought, a hearing shall be held as provided in Code Section 17-10-35.2 to determine if there shall be a review of pretrial proceedings by the Supreme Court prior to a trial before a jury. Review of pretrial proceedings, if ordered by the trial court, shall be exclusively as provided by Code Section 17-10-35.1 and no certificate of immediate review shall be necessary.

(d) Where an appeal is taken under any provision of subsection (a), (b), or (c) of this Code section, all judgments, rulings, or orders rendered in the case which are raised on appeal and which may affect the proceedings below shall be reviewed and determined by the appellate court, without regard to the appealability of the judgment, ruling, or order standing alone and without regard to whether the judgment, ruling, or order appealed from was final or was appealable by some other express provision of law contained in this Code section, or elsewhere. For purposes of review by the appellate court, one or more judgments, rulings, or orders by the trial court held to be erroneous on appeal shall not be deemed to have rendered all subsequent proceedings nugatory; but the appellate court shall in all

cases review all judgments, rulings, or orders raised on appeal which may affect the proceedings below and which were rendered subsequent to the first judgment, ruling, or order held erroneous. Nothing in this subsection shall require the appellate court to pass upon questions which are rendered moot.

O.C.G.A.§ 5-6-35

5-6-35. Cases requiring application for appeal; contents, filing, and service of application; exhibits; response by opposing party; issuance of appellate court order regarding appeal; procedure; supersedeas.

(a) Appeals in the following cases shall be taken as provided in this Code section:

(1) Appeals from decisions of the superior courts reviewing decisions of the State Board of Workers' Compensation, the State Board of Education, auditors, state and local administrative agencies, and lower courts by certiorari or de novo proceedings; provided, however, that this provision shall not apply to decisions of the Public Service Commission and probate courts and to cases involving ad valorem taxes and condemnations;

(2) Appeals from judgments or orders in divorce, alimony, child custody, and other domestic relations cases including, but not limited to, granting or refusing a divorce or temporary or permanent alimony, awarding or refusing to change child custody, or holding or declining to hold persons in contempt of such alimony or child custody judgment or orders;

(3) Appeals from cases involving distress or dispossessory warrants in which the only issue to be resolved is the amount of rent due and such amount is $2,500.00 or less;

(4) Appeals from cases involving garnishment or attachment, except as provided in paragraph (5) of subsection (a) of Code Section 5-6-34;

(5) Appeals from orders revoking probation;

(6) Appeals in all actions for damages in which the judgment is $10,000.00 or less;

(7) Appeals, when separate from an original appeal, from the denial of an extraordinary motion for new trial;

(8) Appeals from orders under subsection (d) of Code Section 9-11-60 denying a motion to set aside a judgment or under subsection (e) of Code Section 9-11-60 denying relief upon a complaint in equity to set aside a judgment;

(9) Appeals from orders granting or denying temporary restraining orders;

(10) Appeals from awards of attorney's fees or expenses of litigation under Code Section 9-15-14; and

(11) Appeals from decisions of the state courts reviewing decisions of the magistrate courts by de novo proceedings so long as the subject matter is not otherwise subject to a right of direct appeal.

(b) All appeals taken in cases specified in subsection (a) of this Code section shall be by application in the nature of a petition enumerating the errors to be urged on appeal and stating why the appellate court has jurisdiction. The application shall specify the order or judgment being appealed and, if the order or judgment is interlocutory, the application shall set forth, in addition to the enumeration of errors to be urged, the need for interlocutory appellate review.

(c) The applicant shall include as exhibits to the petition a copy of the order or judgment being appealed and should include a copy of the petition or motion which led directly to the order or judgment being appealed and a copy of any responses to the petition or motion. An applicant may include copies of such other parts of the record or transcript as he deems appropriate. No certification of such copies by the clerk of the trial court shall be necessary in conjunction with the application.

(d) The application shall be filed with the clerk of the Supreme Court or the Court of Appeals within 30 days of the entry of the order, decision, or judgment complained of and a copy of the application, together with a list of those parts of the record included with the application, shall be served upon the opposing party or parties as provided by law, except that the service shall be perfected at or before the filing of the application. When a motion for new trial, a motion in arrest of judgment, or a motion for judgment notwithstanding the verdict has been filed, the application shall be filed within 30 days after the entry of the order granting, overruling, or otherwise finally disposing of the motion.

(e) The opposing party or parties shall have ten days from the date on which the application is filed in which to file a response. The response may be accompanied by copies of the record in the same manner as is allowed with the application. The response may point out that the decision of the trial court was not error, or that the enumeration of error cannot be considered on appeal for lack of a transcript of evidence or for other reasons.

(f) The Supreme Court or the Court of Appeals shall issue an order granting or denying such an appeal within 30 days of the date on which the application was filed.

(g) Within ten days after an order is issued granting the appeal, the applicant, to secure a review of the issues, shall file a notice of appeal as provided by law. The procedure thereafter shall be the same as in other appeals.

(h) The filing of an application for appeal shall act as a supersedeas to the extent that a notice of appeal acts as supersedeas.

(i) This Code section shall not affect Code Section 9-14-52, relating to practice as to appeals in certain habeas corpus cases.

TITLE 6
CRIMES AND OFFENSES

CHAPTER 5
CRIMES AGAINST THE PERSON

O.C.G.A. 16-5-42

16-5-42. False imprisonment under color of legal process.

When the arrest, confinement, or detention of a person by warrant, mandate, or process is manifestly illegal and shows malice and oppression, an officer issuing or knowingly and maliciously executing the same shall, upon conviction thereof, be removed from office and punished by imprisonment for not less than one nor more than ten years.

CHAPTER 12
OFFENSES AGAINST PUBLIC HEALTH AND MORALS

O.C.G.A. § 16-12-100

16-12-100. Sexual exploitation of children; reporting violation; forfeiture; penalties.

(a) As used in this Code section, the term:

(1) "Minor" means any person under the age of 18 years.

(2) "Performance" means any play, dance, or exhibit to be shown to or viewed by an audience.

(3) "Producing" means producing, directing, manufacturing, issuing, or publishing.

(4) "Sexually explicit conduct" means actual or simulated:

(A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(B) Bestiality;

(C) Masturbation;

(D) Lewd exhibition of the genitals or pubic area of any person;

(E) Flagellation or torture by or upon a person who is nude;

(F) Condition of being fettered, bound, or otherwise physically restrained on the part of a person who is nude;

(G) Physical contact in an act of apparent sexual stimulation or

gratification with any person's unclothed genitals, pubic area, or buttocks or with a female's nude breasts;

(H) Defecation or urination for the purpose of sexual stimulation of the viewer; or

(I) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure.

(5) "Visual medium" means any film, photograph, negative, slide, magazine, or other visual medium.

(b) (1) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.

(2) It is unlawful for any parent, legal guardian, or person having custody or control of a minor knowingly to permit the minor to engage in or to assist any other person to engage in sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.

(3) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of any performance.

(4) It is unlawful for any parent, legal guardian, or person having custody or control of a minor knowingly to permit the minor to engage in or to assist any other person to engage in sexually explicit conduct for the purpose of any performance.

(5) It is unlawful for any person knowingly to create, reproduce, publish, promote, sell, distribute, give, exhibit, or possess with intent to sell or distribute any visual medium which depicts a minor engaged in any sexually explicit conduct.

(6) It is unlawful for any person knowingly to advertise, sell, purchase, barter, or exchange any medium which provides information as to where any visual medium which depicts a minor engaged in any sexually explicit conduct can be found or purchased.

(7) It is unlawful for any person knowingly to bring or cause to be brought into this state any material which depicts a minor engaged in any sexually explicit conduct.

(8) It is unlawful for any person knowingly to possess or control any material which depicts a minor engaged in any sexually explicit conduct.

(c) A person who, in the course of processing or producing visual or printed matter either privately or commercially, has reasonable cause to believe that the visual or printed matter submitted for processing or producing depicts a minor engaged in sexually explicit conduct shall

immediately report such incident, or cause a report to be made, to the Georgia Bureau of Investigation or the law enforcement agency for the county in which such matter is submitted. Any person participating in the making of a report or causing a report to be made pursuant to this subsection or participating in any judicial proceeding or any other proceeding resulting therefrom shall in so doing be immune from any civil or criminal liability that might otherwise be incurred or imposed, providing such participation pursuant to this subsection is made in good faith.

(d) The provisions of subsection (b) of this Code section shall not apply to the activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses or to legitimate medical, scientific, or educational activities.

(e) (1) A person who is convicted of an offense under this Code section shall forfeit to the State of Georgia such interest as the person may have in

(A) Any property constituting or directly derived from gross profits or other proceeds obtained from such offense; and

(B) Any property used, or intended to be used, to commit such offense

(2) In any action under this Code section, the court may enter such restraining orders or take other appropriate action, including acceptance of performance bonds, in connection with any interest that is subject to forfeiture.

(3) The court shall order forfeiture of property referred to in paragraph (1) of this subsection if the trier of fact determines, beyond a reasonable doubt, that such property is subject to forfeiture.

(4) The provisions of subsection (u) of Code Section 16-13-49 shall apply for the disposition of any property forfeited under this subsection. In any disposition of property under this subsection, a convicted person shall not be permitted to acquire property forfeited by such person.

(f) (1) The following property shall be subject to forfeiture to the State of Georgia:

(A) Any material or equipment used, or intended for use, in producing, reproducing, transporting, shipping, or receiving any visual medium in violation of this Code section;

(B) Any visual medium produced, transported, shipped, or received in violation of this Code section, or any material containing such depiction; provided, however, that any such property so forfeited shall be destroyed by the appropriate law enforcement agency after it is no longer needed in any court proceedings; or

(C) Any property constituting or directly derived from gross profits or

other proceeds obtained from a violation of this Code section; except that no property of any owner shall be forfeited under this paragraph, to the extent of the interest of such owner, by reason of an act or omission established by such owner to have been committed or omitted without knowledge or consent of such owner.

(2) The procedure for forfeiture and disposition of forfeited property under this subsection shall be as provided for forfeitures under Code Section 16-13-49.

(g) (1) Except as otherwise provided in paragraphs (2) and (3) of this subsection, any person who violates a provision of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five years nor more than 20 years and by a fine of not more than $100,000.00. In the event, however, that the person so convicted is a member of the immediate family of the victim, no fine shall be imposed.

(2) Any person who violates paragraph (8) of subsection (b) of this Code section shall be guilty of a misdemeanor.

(3) Any person who violates subsection (c) of this Code section shall be guilty of a misdemeanor.

TITLE 17
CRIMINAL PROCEDURE
CHAPTER 7
PRETRIAL PROCEEDINGS

Article 7
Demand for Trial; Announcement of Readiness for Trial.

O.C.G.A. § 17-7-170

17-7-170. Demand for trial; discharge and acquittal for lack of prosecution.

(a) Any person against whom a true bill of indictment or an accusation is filed with the clerk for an offense not affecting his life may enter a demand for trial at the court term at which the indictment or accusation is filed or at the next succeeding regular court term thereafter; or, by special permission of the court, he may at any subsequent court term thereafter demand a trial. In either case, the demand for trial shall be served on the prosecutor and shall be binding only in the court in which the demand is filed, except where the case is transferred from one court to another without a request from the defendant.

(b) If the person is not tried when the demand is made or at the next succeeding regular court term thereafter, provided at both court terms there were juries impaneled and qualified to try him, he shall be absolutely discharged and acquitted of the offense charged in the indictment or accusation. For purposes of computing the term at which a misdemeanor must be tried under this Code section, there shall be excluded any civil term of court in a county in which civil and criminal terms of court are designated; and for purposes of this Code section it shall be as if such civil term was not held.

TITLE 51
TORTS

CHAPTER 7
FALSE ARREST, FALSE IMPRISONMENT, MALICIOUS PROSECUTION, AND ABUSIVE LITIGATION

O.C.G.A. § 51-7-1

51-7-1. Right of action for false arrest.

An arrest under process of law, without probable cause, when made maliciously, shall give a right of action to the party arrested.